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band and wife, contemplating their immediate separation, is illegal and void.

**4. Evidence (§ 437\*)—Parol Evidence Admissible to Show That Antenuptial Contract Contemplated Separation.**—In suit for divorce by the mother of an illegitimate child, who had made an antenuptial contract with her husband, the child's father, in fact intended to enable the father to separate from the mother and escape his obligation to support the child by making small weekly payments, parol evidence held admissible to show the illegality of the contract, in that it was intended to validate a separation after marriage.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 666.]

**6. Divorce (§ 186\*)—Effect of Death of Successful Defendant Pending Appeal.**—Defendant husband having died pending the wife's appeal in her divorce suit, which had resulted in decree of divorce for the husband on his cross-bill, no decree will be entered by the Supreme Court, except to reverse the original decree under review in such of its holdings as are found to be erroneous, to which extent the decree of the Supreme Court will still be effective, as there can be no abatement of the original decree by reason of the death of party after appeal, while, under Code 1919, § 6167, the appellate court in its discretion may enter its decree dealing with the adjudications of the original decree as if no death had occurred.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 529.]

Appeal from Circuit Court, Elizabeth City County.

Suit for divorce by Mittie Ann Cumming against S. Gordon Cumming, wherein defendant husband filed cross-bill. From a decree granting him absolute divorce, plaintiff wife appeals. Reversed and remanded.

*R. E. Byrd* and *Richard B. Gwathmey*, both of Richmond, for appellant.

*C. V. Meredith*, of Richmond, and *C. Vernon Spratley*, of Hampton, for appellee.

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DUNCAN *v.* BROADWAY NAT. BANK.

March 18, 1920.

[102 S. E. 577.]

**1. Continuance (§ 51 (5)\*)—Further Continuance for Absent Witnesses Held Properly Refused.**—Where case had been continued three times, chiefly for defendant's benefit, refusal to again continue the case on defendant's motion for absence of witnesses, two of which were nonresidents and one a resident whose whereabouts were

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

unknown, and for all of whom a summons had been issued and returned unexecuted, held within court's discretion, in absence of showing of reasons for the belief of counsel as to the materiality of the witnesses or as to probability of securing their testimony at a subsequent trial.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 282, 293, 301.]

**2. Continuance (§ 51 (5)\*)—For Absence of Witnesses within Discretion of Court.**—The granting or refusal of a further continuance for absence of witnesses is discretionary with the trial court.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 301.]

**3. Continuance (§ 51 (6)\*)—Requiring Counsel to Disclose Facts to Be Proved by Absent Witnesses Held Proper.**—Action of court in requiring counsel for defendant, on their motion for further continuance for absence of witnesses, to testify as to the facts which they expected to prove by the absent witnesses and the reasons upon which their expectation was based, held proper.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 293.]

**4. Appeal and Error (§ 1047 (5)\*)—Refusal to Permit Examination of Books before Introduction Harmless, Where Defendant Got Benefit of Them at Trial.**—Refusal to permit defendant to inspect books and papers produced by witness, pursuant to summons under Code 1904, § 3371 (Code 1919, § 6237), before they were introduced in evidence by plaintiff, held harmless, where the witness who had the custody of the books and papers was thereafter fully examined with reference to them, so that defendant got the benefit of everything they contained.

**5. Trial (§ 59 (2)\*)—Compelling Taking of Testimony Out of Order Not Improper.**—In action by a bank, where defendant had summoned as witnesses so many of the bank's officers that bank, 90 miles from place of trial, would probably have had to close up if all attended, action of court in requiring defendant to proceed with examination of the bank officers present was not error, as order of proof is discretionary.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 953.]

**6. Bills and Notes (§ 97 (3)\*)—Notes Given for Stock and Agreement to Resell Held Not Void for Failure of Consideration.**—Where maker, in return for execution of notes, received corporate stock together with seller's agreement to resell the stock at maker's option 12 months from date of sale, held, in action on notes prior to expiration of the 12 months, that there was no failure of consideration.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 417.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**7. Corporations (§ 120\*)—Notes for Corporate Stock Held Not to Have Been Procured by Fraud.**—Notes given for corporate stock and agreement to resell on maker's option 12 months after sale held not to have been procured by fraud.

**8. Bills and Notes (§ 445\*)—Action on Notes Held Not Prematurely Brought.**—Where notes were given as consideration for stock and agreement to resell at maker's option 12 months after sale, action on the notes prior to expiration of such 12-month period was not premature.

**9. Bills and Notes (§§ 370, 373\*)—Failure of Consideration and Fraud Not Defenses against Bona Fide Purchaser.**—The defenses of failure of consideration and fraudulent procurement of notes, even though good as against payee, were not available as against a bona fide holder in due course and for value.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 419, 439, 491.]

**10. Bills and Notes (§ 525\*)—Evidence Held to Show Plaintiff a Bona Fide Purchaser.**—In action on notes, defended on ground of failure of consideration and fraud, evidence as to the caution exercised by plaintiff before accepting notes held to show plaintiff a bona fide holder in due course and for value.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 431.]

**11. Bills and Notes (§ 353\*)—Notes for Which Bank Issued Certificate of Deposit Good, Where Bank Had No Notice of Infirmary.**—Where bank, holder of notes, gave payee certificate of deposit, it was entitled to recover thereon, under Code 1919, § 5616, even though there was an infirmity, good as a defense as against payee, where bank had no notice of infirmity until after certificate of deposit was paid.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 430.]

Error to Circuit Court, Culpeper County.

Action by the Broadway National Bank against E. P. Duncan. Judgment for plaintiff, and defendant brings error. Affirmed.

*Hiden & Bickers* and *S. M. Nottingham*, all of Culpeper, for plaintiff in error.

*F. T. Sutton, Jr.*, of Richmond, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.